IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 154 OF 2006

M/s Kai-Tech Constructions
Pvt. Ltd., Margao Goa. ... Applicant

versus

M/s Durga Tiles and another. ... Respondents

Mr. S. Dessai, Advocate for the Applicant.

Mr. H. D. Naik, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 20TH APRIL, 2006.

P.C.:-

Heard Mr. S. Dessai, the learned Counsel on behalf of the applicant/accused and Mr. H. D. Naik, the learned Counsel on behalf of the respondent no.1/complainant.

The applicant/accused was convicted by the learned J.M.F.C., Ponda under Section 138 of the Negotiable Instruments Act, 1881 and when the applicant/accused filed an appeal to the Court of Sessions, the said appeal came to be dismissed for

default of appearance of the applicant/accused on 23-11-2005. On behalf of the applicant/accused reliance has been placed on cases reported in (1994) 4 SCC 664 and (1996) 4 SCC 720 wherein the Apex Court has stated that an appeal, even in case of the absence of the appellant, could not be dismissed for default. In the light of that, the application is bound to succeed. The Order dated 23-11-2005 of the learned Ist Adhoc Assistant Sessions Judge is hereby set aside and the learned Ist Adhoc Additional Sessions Judge is hereby directed to dispose of the appeal on merits after hearing both the parties as expeditiously as possible and in any event within a period of six months from the receipt of the order. Both the parties are directed to remain present before the learned Ist Adhoc Assistant Sessions Judge on 3-5-2006 at 10.00 a.m.

N. A. BRITTO, J.

RD